

**CITY OF SANIBEL
LEGAL DEPARTMENT**



MEMORANDUM

TO: Pamela Smith, MMC
City Clerk

FROM: Kenneth B. Cuyler *KBC*
City Attorney

DATE: January 22, 2013

RE: **Opinion that the City of Sanibel is not required to hold an election on March 5, 2013 where three candidates have qualified for exactly three City Council Seats**

This Memorandum will evidence my opinion that the City of Sanibel is not required to hold an election on March 5, 2013 where the facts are as follows:

1. Three City Council seats are scheduled for election on March 5, 2013 due to the expiring four year terms of three of the sitting Council members.
2. The qualifying period has expired and exactly three candidates have qualified for election to the three City Council seats to be filled.
3. There is no other issue to be voted upon by the electorate (i.e., no other election contest, no proposed charter amendments, etc.)
4. The sole subject of the election would be the election of the three qualified candidates to fill the three available City Council seats.

Under the circumstances described above, my opinion is that the City is not required to hold an election of the three unopposed candidates for the three available City Council seats. My review of the City Charter and remainder of the City Code of Ordinances indicates that this situation is not specifically addressed by the City's election procedures. However, Section 100.3605(1), Florida Statutes, entitled "Conduct of municipal elections" provides, in part, that "the Florida Election Code, Chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision." Further, Section 101.151(7), Florida Statutes, provides as follows:

- (7) Except for justices or judges seeking retention, the names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself.

Since there are exactly three qualified candidates and there are exactly three City Council seats to be filled, the qualified candidates are deemed to be unopposed. Since Florida election law provides that the names of unopposed candidates shall not appear on the general election ballot and the sole subject of the election would be for the election of the three unopposed candidates for the three open City Council seats, there is no election ballot and therefore no need or requirement for an election.

If you have any other questions regarding this matter, please let me know.

KBC/jg

cc: City Council
Judith A. Zimomra, City Manager

CITY OF SANIBEL

RESOLUTION 13-004

A RESOLUTION DESIGNATING THE THREE CANDIDATES WHO HAVE OFFICIALLY QUALIFIED FOR THE OFFICE OF SANIBEL CITY COUNCIL; FINDING AND DECLARING THAT THE THREE QUALIFIED CANDIDATES ARE UNOPPOSED FOR THE THREE AVAILABLE CITY COUNCIL SEATS; FINDING AND DECLARING THAT PURSUANT TO THE SANIBEL CHARTER, THE SANIBEL CODE OF ORDINANCES AND GENERAL LAW THAT SUCH THREE QUALIFIED AND UNOPPOSED CANDIDATES HAVE BECOME COUNCIL MEMBERS ELECT AND SHALL TAKE OFFICE AS CITY COUNCIL MEMBERS ON MARCH 19, 2013; DECLARING THAT THE CITY OF SANIBEL MUNICIPAL ELECTION SCHEDULED FOR MARCH 5, 2013 IS HEREBY CANCELED SINCE THERE ARE NO OTHER ELECTION CONTESTS OR BALLOT MEASURES TO BE PRESENTED TO THE ELECTORATE AT SUCH ELECTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there are currently three seats on the Sanibel City Council which will be required to be filled as a result of the expiring four year terms of three Council members; and

WHEREAS, during the qualifying period there were three people qualified as City Council candidates, specifically (in alphabetical order) Mick Denham, Marty Harrity and Kevin Ruane; and

WHEREAS, since there are exactly three qualified candidates and three City Council seats to be filled, the three qualified candidates are deemed to be unopposed and are further deemed to be Council members elect as of the end of the candidate qualifying period; and

WHEREAS, according to law, when qualified and unopposed, City Council candidate names are not to be placed on any ballot and, since there are no other ballot measures to be presented to the electorate as part of the general election, there is no need or requirement that an election take place;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel, Florida:

SECTION 1. The City Council hereby finds and declares as follows:

- (a) Mick Denham, Marty Harrity and Kevin Ruane (in alphabetical order) having duly qualified during the candidate qualification period for the office of Sanibel City Council are hereby designated as the three qualified candidates for the three available City Council seats;

(b) Mick Denham, Marty Harrity and Kevin Ruane, as designated qualified candidates who were and are unopposed for the three available City Council seats, are hereby deemed Council members elect (in addition to their current status as sitting Council members) who shall take office as City Council members in accordance with all requirements of law on March 19, 2013; and

(c) The March 5, 2013 election is hereby canceled, in accordance with the Sanibel Charter, the Sanibel Code of Ordinances and general election law. There is no need or requirement that the unopposed qualified candidates be placed on a ballot and there are no other election contests or ballot measures to be presented to the Sanibel electorate.

SECTION 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Sanibel, Florida, this 5th day of February, 2013.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: *Kenneth B. Cuyler* *1/25/13*
Kenneth B. Cuyler, City Attorney Date

Vote of Council members:

Ruane _____
Denham _____
Congress _____
Harrity _____
Jennings _____

Date filed with City Clerk: _____